IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1130 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TRIBHOVANDASSHANKERBHAIPATEL - Petitioner(s)

Versus

VASAVACHHOTIYABHAIDADLABHAI & 1 - Respondent(s)

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Appearance :

MR MUKUND M DESAI for Petitioner(s) : 1,
UNSERVED-EXPIRED (R) for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
MR DIPEN DESAI ASST GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/10/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment

and order passed by the Additional Chief Secretary, Revenue Department, State of Gujarat dated 12th January, 1989 passed in Revision Application Nos.507 and 508 of 1986 in dismissing the same and confirming the orders passed by the lowers authorities i.e. Collector, Vadodara dated 15.5.1986 passed in Land Appeal No.26 of 1985 as well as RTS Revision Application No.62 of 1985 in dismissing the same and confirming the orders passed by the Deputy Collector, Dabhoi dated 4.9.1985 passed in Breach of Condition Case No.1 of 1985 as well as RTS Revision Application No.29 of 1984.

2. The dispute is with regard to the land bearing Survey No.575 and 563 situated at village Timbarva, Taluka Shinor, District Vadodara and the said lands came to be purchased by the petitioners. Necessary entry was made in the revenue record vide Entry No.4580 on 30.1.1980, however, while certifying the entry, proceedings were sent to the competent authority for initiating proceedings for breach of condition as before transaction, permission from the

competent authority was not obtained and no steps were taken to get the land converted from new tenure land to old tenure land. The Deputy Collector, Dabhoi by its order dated 4.9.1985 forfeited the land to the Government as there was breach of condition of the grant and after recovering the fine of Rs.2/- ordered re-grant to the original land owners. Simultaneously, the Entry No.4580 dated 30.4.1980 also came to be set aside. Being aggrieved and dissatisfied with the orders passed by the Deputy Collector, Dabhoi dated 4.9.1985 in forfeiting the land to the State Government for breach of conditions as well as in quashing and setting aside the entry , the petitioner preferred appeal as well as Revision Application before the Collector, Vadodara and the Collector, Vadodara by its judgment and order dated 15.5.1986 dismissed the said revision application as well as the appeal confirming the orders passed by the Deputy Collector, Dabhoi in forfeiting the land to the State Government for breach of condition and quashed and set aside the entry in question. Being aggrieved and dissatisfied with the aforesaid common order

passed by the Collector, Vadodara, the petitioner has preferred two Revision Applications being Revision Application Nos.507 and 508 of 1986 and both the aforesaid revision applications came to be dismissed by the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat by its judgment and order dated 12.1.1989. Being aggrieved and dissatisfied with the aforesaid two orders , the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri Trilok Patel, learned advocate appearing on behalf of the petitioner has vehemently submitted that the the petitioner has purchased the land in question and the full consideration is paid and while relying upon the decision of this Court in case of ***PATEL MAGNBHAI KESURBHAI SINCE DECD. THROUGH HIS HEIRS VS. STATE OF GUJARAT, 1998 (2) GLR 961*** , it is submitted that as held by this Court, in appropriate cases, the Court may send the matter back to the Collector to consider the question of granting ex-post facto permission and sanction to such

transaction. He has also relied upon subsequent judgments of the learned Single Judge of this Court in case of PATEL TRIBHOVANDAS SHANKERBHAI V. ASSISTANT COLLECTOR rendered in Special Civil Application No.6948 of 1985, by which, the learned Single Judge has remanded the matter to the Collector for granting ex-post facto permission and therefore, it is requested to allow the present special civil application while remanding the matter to the Collector for ex-post facto permission.

4. Shri Dipen Desai, learned AGP has tried to support the orders passed by the all the authorities below and has requested to dismiss the present special civil application.

5. From the facts that the petitioner is in possession of the lands in question at least since 1980 and his possession was protected by this Court by way of interim relief in the present special civil application and considering the judgment of the learned Single Judge of this Court in the case of

PATEL MAGNBHAI KESURBHAI SINCE DECD. THROUGH HIS HEIRS VS. STATE OF GUJARAT, 1998 (2) GLR 961 (Supra), this Court adopts the same course and propose to remand the matter to the Assistant Collector, Dabhoi for hearing the matter afresh with liberty to the parties to apply for ex-post facto sanction.

6. In the result, the petition is partly allowed. The petitioner as well as private respondents shall be at liberty to apply to the competent authority for granting ex-post facto sanction to the transaction in question and the competent authority shall hear and decide the matter afresh after hearing both the parties in light of the observations made hereinabove and the decisions referred to and without being inhibited by impugned orders passed Collector, Vadodara dated 15.5.1986 passed in Land Appeal No.26 of 1985 as well as RTS Revision Application No.62 of 1985 and the orders passed by the Deputy Collector, Dabhoi dated 4.9.1985 passed in Breach of Condition Case No.1 of 1985 as well as RTS Revision Application No.29 of 1984 as well as order passed by the

Additional Chief Secretary, Revenue Department, State of Gujarat dated 12th January, 1989 passed in Revision Application Nos.507 and 508 of 1986.

7. The petition is disposed of in terms of aforesaid directions and observations. Rule is made absolute to the aforesaid extent, however, there will be no order to costs.

[M.R.Shah, J.]

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